IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal Lodging No 756 of 2003
in
Summons for Judgment no. 377 of 200l
with
Summons for Judgement no.l338 of 200l
in
Sum Suit No.4554 of 2000

Mr D.V.Sathe and ors...appellants
vs
Mr Purshottam S Bohra and ors.....Respondents

Mr.V.S.Shah i/b Mr Sualeh Nagvadaria for appellants
Mr H V Chande for respondents

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.

Dated l7.l.2005

P.C:

Admit.

l. The learned counsel for the respondents waive service. By consent appeal is taken up for final hearing.

2. This appeal is directed against the order passed by the learned single Judge in Summons for Judgement no.377 of 200l and Summons for Judgment no. l338 of 200l in Summary Suit No. 4554 of 2000. By the impugned order the learned single Judge has decreed the suit against the appellants and permitted the Summons for Judgement against

respondent no.6 to be withdrawn with liberty to take out fresh Summons for Judgement after proceedings before the BIFR are disposed of.

2. The learned counsel appearing for the appellants submitted that the learned single Judge ought to have given an opportunity to the appellants to file their affidavit in reply and in this regard the learned counsel pointed out that the Summons for Judgement had come up before the learned single Judge on l3.l.2003 at about ll.20 a.m. At that time the advocate had requested the learned Judge to keep the matter back since the affidavit was under process of affirmation in the Associates' office. But the learned Judge had not kept the matter back and consequently made the Summons for Judgement absolute. The learned counsel for the appellants contended that the present proceedings are nothing but a fraudulent attempt to foist fictitious liability on the appellants by the respondent no.l in collusion with one H S Panchmatia, who was a finance broker of respondent no.6. In any event the learned counsel submitted that the suit filed by the respondents is not within the purview of Order 37 rule 2 of the CPC and the suit is not maintainable as a Summary Suit. On the other hand the learned counsel

appearing for respondents submitted that despite several opportunities given to the appellants they had failed to file the affidavit and therefore no interference is warranted with the order under appeal.

3. We have given our anxious though to the rival submissions made at the Bar.We have also perused the record of the case. We are of the view that in the facts and circumstances of the case the ends of justice would be served if the appellants are given an opportunity for filing their reply to the Summons for Judgement subject to payment of costs. We therefore set aside the impugned order of the learned single Judge and remit the Summons for Judgement to the learned single Judge for disposal in accordance with law. The appellants to file their reply to the Summons for Judgement within a period of four weeks from today. The learned single Judge is requested to expedite the hearing of the Summons for Judgement. The appellants are directed to pay costs of this appeal to the respondent nos.l and 2 quantified at Rs.l0,000. Appeal stands disposed of accordingly.